

ORIGINAL RECEIVED

NOV 11 0 1993

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Applications of	)	MM Docket No. 93-88
EZ COMMUNICATIONS, INC.	)	File No. BRH-910401C2
For Renewal of License of FM Radio	)	
Station WBZZ(FM) on Channel 229B	)	
at Pittsburgh, Pennsylvania	)	
ALLEGHENY COMMUNICATIONS GROUP,	)	File No. BPH-910628MC
INC.	)	
For Construction Permit for	)	
a New FM Broadcast Station on	)	
Channel 229B at Pittsburgh,	)	
Pennsylvania	)	

To: Honorable Edward Luton  
Administrative Law Judge

**OPPOSITION TO MOTION TO ENLARGE ISSUES**

Allegheny Communications Group, Inc. (Allegheny) by counsel, hereby opposes the October 27, 1993, Motion to Enlarge Issues filed by EZ Communications, Inc. (EZ). In support whereof, the following is shown.

EZ's motion fails to present a basis for enlargement. EZ makes two contentions, neither of which is well taken. First, EZ, alleges a "misrepresentation" in a pleading in which counsel pointed out that certain Allegheny contentions as to EZ sexual harassment and discrimination and abuse of process had not been considered by "the Commission". The statement in

No. of Copies rec'd  
List ABCDE

*CHG*

question was in the following context. In the Hearing Designation Order (DA93-361) in this proceeding, there was a ruling on Allegheny's contentions, but by the Chief, Audio Services Division of the Mass Media Bureau. This was not the Commission but the staff acting pursuant to delegated authority. The distinction between staff action and Commission action is explicitly recognized in the Commission rule providing for Applications For Review of Action Taken Pursuant To Delegated Authority. See Commission Rule 1.115(a) which states:

"Any person aggrieved by any action taken pursuant to delegated authority may file an application requesting review of that action by the Commission". (emphasis added).

Allegheny filed on May 10, 1993 with the Commission, a Motion For Leave to File Application For Review<sup>1</sup> and an Application For Review. These pleadings were specifically referenced in Allegheny's Petition To Deny (See Page 2 of Attachment A to EZ's Motion).

As of the date of the Petition To Deny and continuing to date, there has been no notice of any ruling by the Commission on Allegheny's May 10, 1993 Application For Review. Thus, the Commission, as contrasted with the staff, has yet to rule, and

---

<sup>1</sup> The Motion For Leave to File was required since under Rule 1.115(e)(3) Applications For Review of the Hearing Designation Order would have been deferred until after the Review Board decision, the presiding Judge having declined to certify the matter.

Allegheny's assertion was correct. Moreover, it is extremely attenuated to contend that counsel's statement as to the status of Commission action was intended to or could in any way mislead or deceive the agency.

EZ's second argument is that Allegheny has abused the Commission's processes because it lacked standing to object to EZ's application to acquire a second FM station (WQKB) in the Pittsburgh market. Allegheny's standing vis-a-vis the WQKB assignment has not yet been adjudicated. Allegheny believes that it will be ruled that it does have standing based upon the unique circumstances of this case. Thus, Allegheny is a duly-filed applicant designated in a comparative renewal proceeding with EZ as to EZ Pittsburgh FM station WBZZ. In the comparative renewal proceeding, Allegheny is challenging EZ's basic qualifications, the status of such challenge now before the Commission on the May 10, 1993 Application For Review. Now, EZ seeks to acquire a second FM license in the Pittsburgh market, which under the statute (Section 310(d) and 308) can occur only if the proposed assignee EZ is found to be fully qualified and the assignment to be in the public interest. Obviously, a grant by the Commission of the assignment application could impact Allegheny's position as to EZ's basic qualifications. Allegheny thus has legitimate reason to assert and protect its position as to EZ's qualifications, particularly where EZ seeks to acquire a second station in the same service in the same market.

Allegheny's Petition to Deny the assignment is reasonable, if not essential, advocacy to preserve Allegheny's position.

It should also be noted that EZ's notice fails to meet the test that:

"...a party alleging that a petition to deny is an abuse of the Commission's processes must make a strong showing that the petition is captious or purely obstructive." KOED, Inc., 88 FCC 2d 1159 (1982) at 1167.

EZ's motion falls far short of that standard and appears to be essentially an ill-tempered, retaliatory gesture. The motion should thus be denied.

Respectfully submitted,

**ALLEGHENY COMMUNICATIONS GROUP,  
INC.**

By

  
Morton L. Berfield

Cohen and Berfield  
1129 20th Street, NW, Suite 507  
Washington, DC 20036  
(202) 466-8565

Its Attorney

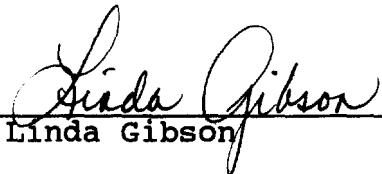
Date: November 10, 1993

**CERTIFICATE OF SERVICE**

I, Linda Gibson, do hereby certify that on the 10th day of November 1993, a copy of the foregoing "Opposition to Motion To Enlarge Issues" was sent first-class mail, postage prepaid to the following:

Paulette Y. Laden, Esq.\*  
Robert A. Zauner, Esq.  
Hearing Branch  
Federal Communications Commission  
2025 M Street, N.W., Room 7212  
Washington, D.C. 20554

Rainer K. Kraus, Esq.  
Herbert D. Miller, Esq.  
Koteen & Naftalin  
1150 Connecticut Avenue, NW  
Suite 1000  
Washington, DC 20036  
Counsel for EZ Communications, Inc.

  
\_\_\_\_\_  
Linda Gibson

**\*HAND-DELIVERED**